

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE: §
§
LEONARD KIAMBI MBWIRIA, § CASE NO. 18-42648
§ (Chapter 7)
DEBTOR §
§

MOTION TO COMPEL DEBTOR TO TURNOVER POSSESSION OF REAL PROPERTY LOCATED AT 8802 GROTON COURT, LANHAM, MARYLAND

Notice Pursuant to Local Rule 9007(a)

Your rights may be affected by the relief sought in this pleading. You should read this pleading carefully and discuss it with your attorney, if you have one in this bankruptcy case. If you oppose the relief sought by this pleading, you must file a written objection, explaining the factual and/or legal basis for opposing the relief.

No hearing will be conducted on this pleading unless a written objection is filed with the Clerk of the United States Bankruptcy Court and served upon the party filing this pleading WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SERVICE listed in the certificate of service unless the court shortens or extends the time for filing such response. If no objection is timely served and filed, this pleading shall be deemed to be unopposed, and the court may enter an order granting the pleading. If an objection is filed and served in a timely manner, the court will thereafter set a hearing with appropriate notice. If you fail to appear at the hearing, your objection may be stricken. The court reserves the right to set a hearing on any matter.

TO THE HONORABLE BRENDA T. RHOADES, U. S. BANKRUPTCY JUDGE:

Christopher J. Moser, Trustee (“Trustee”) files his Motion to Compel Debtor to Turnover Possession of Real Property Located at 8802 Groton Court, Lanham, Maryland (“Motion”) as follows:

Jurisdiction

1. This Court has jurisdiction over this matter pursuant to the provisions of 28 U.S.C. §§ 1334 and 157, and 11 U.S.C. § 542. This matter constitutes a “core” proceeding within the meaning of 28 U.S.C. § 157(b)(2).

Facts

2. On November 27, 2018 (the “Date of Bankruptcy”), Leonard Kiambi Mbwiria (“Debtor”) filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code.

3. The Trustee is the acting Chapter 7 trustee of the Debtor’s bankruptcy estate.

4. As of the Date of Bankruptcy, the Debtor owned a non-exempt house located at 8802 Groton Court, Lanham, Maryland (the “Property”).

5. While testifying under oath at the meeting of creditors the Debtor advised the Trustee that the Property was vacant, that no rental income was being generated from the Property and that within days the Debtor would provide the Trustee with keys to the Property so that the Trustee could undertake efforts to sell the Property.

6. The Bankruptcy Court has authorized the Trustee to hire a real estate broker to sell the Property.

7. Despite numerous requests the Debtor has failed to provide the Trustee with keys to the Property. As a result, Debtor’s counsel advised the Trustee that it would be easier for the Trustee to change locks on the Property than to continue to wait for the Debtor to provide a key to the Property.

8. On January 28, 2019, the Trustee’s realtor inspected the Property to insure it was vacant and to change locks. The realtor discovered that the house was occupied by a tenant who is presumably paying rent.

Turnover (11 U.S.C. § 542)

9. The Property is of value to the bankruptcy estate.

10. Pursuant to §542(a) of the Bankruptcy Code, the Trustee is entitled to turnover of the Property from the Debtor and turnover of all rental income received by the Debtor.

11. Trustee requires immediate turnover of the Property so that he can begin marketing the

Property without interference or hindrance from the Debtor or the tenant. Neither the Debtor nor the tenant has a possessory right to the Property.

WHEREFORE, PREMISES CONSIDERED, the Trustee prays that this Court enter an order requiring the Debtor to immediately vacate and turnover possession of the Property to the Trustee, to turn over all rents collected to the Trustee and that Trustee be granted such other and further relief, at law or in equity, to which the Trustee may be justly entitled.

Respectfully submitted,

QUILLING, SELANDER, LOWNDS,
WINSLETT & MOSER, P.C.
2001 Bryan Street, Suite 1800
Dallas, Texas 75201-4240
Telephone: (214) 880-1805
Facsimile: (214) 871-2111
cmoser@qslwm.com (Email)

By:/s/ Christopher J. Moser
Christopher J. Moser

ATTORNEYS FOR TRUSTEE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion has been served via regular U.S. mail, postage prepaid on this 29th day of January, 2019 upon the following:

Office of the U.S. Trustee
110 N. College Ave., Suite 300
Tyler, TX 75702

Leonard Kiambi Mbwiria
7117 Canyon Meadow Dr.
Sachse, TX 75048

Richard A. Pelley
Pelley Law Offices
905 N. Travis
Sherman, TX 75090

Tenant
8802 Groton Court
Landham, Maryland 20706

/s/ Christopher J. Moser